

AMENDED IN SENATE MARCH 17, 2016

**SENATE BILL**

**No. 1011**

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**Introduced by Senator Mendoza**

February 11, 2016

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An act to amend, repeal, and add Section 1091 of the Government Code, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1011, as amended, Mendoza. Public officers: contracts: financial interest.

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in a contract, as specified, made by them in their official capacity or by any body or board of which they are members, subject to specified exceptions. Existing law identifies certain remote interests that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract, including, among others, that of a parent in the earnings of his or her minor child for personal services.

This bill would, on and after January 1, 2018, include within the definition of remote interest that of a public officer in the financial interest of that public officer's child, parent, sibling, or the spouse of the child, parent, or sibling, ~~in a contract made by that public officer,~~ except a public officer's financial interests do not include any financial interest of those other persons unless the interest is actually known to the public officer, ~~and that public officer knowingly or willfully fails to disclose those interests.~~ *officer.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other

1 persons holding an interest in the contracting party are regarded  
2 as having the “real or ultimate ownership” of the contracting party.

3 (3) That of an employee or agent of the contracting party, if all  
4 of the following conditions are met:

5 (A) The agency of which the person is an officer is a local public  
6 agency located in a county with a population of less than 4,000,000.

7 (B) The contract is competitively bid and is not for personal  
8 services.

9 (C) The employee or agent is not in a primary management  
10 capacity with the contracting party, is not an officer or director of  
11 the contracting party, and holds no ownership interest in the  
12 contracting party.

13 (D) The contracting party has 10 or more other employees.

14 (E) The employee or agent did not directly participate in  
15 formulating the bid of the contracting party.

16 (F) The contracting party is the lowest responsible bidder.

17 (4) That of a parent in the earnings of his or her minor child for  
18 personal services.

19 (5) That of a landlord or tenant of the contracting party.

20 (6) That of an attorney of the contracting party or that of an  
21 owner, officer, employee, or agent of a firm that renders, or has  
22 rendered, service to the contracting party in the capacity of  
23 stockbroker, insurance agent, insurance broker, real estate agent,  
24 or real estate broker, if these individuals have not received and  
25 will not receive remuneration, consideration, or a commission as  
26 a result of the contract and if these individuals have an ownership  
27 interest of 10 percent or more in the law practice or firm, stock  
28 brokerage firm, insurance firm, or real estate firm.

29 (7) That of a member of a nonprofit corporation formed under  
30 the Food and Agricultural Code or a nonprofit corporation formed  
31 under the Corporations Code for the sole purpose of engaging in  
32 the merchandising of agricultural products or the supplying of  
33 water.

34 (8) That of a supplier of goods or services when those goods or  
35 services have been supplied to the contracting party by the officer  
36 for at least five years prior to his or her election or appointment  
37 to office.

38 (9) That of a person subject to the provisions of Section 1090  
39 in any contract or agreement entered into pursuant to the provisions  
40 of the California Land Conservation Act of 1965.

1 (10) Except as provided in subdivision (b) of Section 1091.5,  
2 that of a director of, or a person having an ownership interest of,  
3 10 percent or more in a bank, bank holding company, or savings  
4 and loan association with which a party to the contract has a  
5 relationship of borrower or depositor, debtor or creditor.

6 (11) That of an engineer, geologist, architect, or planner  
7 employed by a consulting engineering, architectural, or planning  
8 firm. This paragraph applies only to an employee of a consulting  
9 firm who does not serve in a primary management capacity, and  
10 does not apply to an officer or director of a consulting firm.

11 (12) That of an elected officer otherwise subject to Section 1090,  
12 in any housing assistance payment contract entered into pursuant  
13 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.  
14 Sec. 1437f) as amended, provided that the housing assistance  
15 payment contract was in existence before Section 1090 became  
16 applicable to the officer and will be renewed or extended only as  
17 to the existing tenant, or, in a jurisdiction in which the rental  
18 vacancy rate is less than 5 percent, as to new tenants in a unit  
19 previously under a Section 8 contract. This section applies to any  
20 person who became a public official on or after November 1, 1986.

21 (13) That of a person receiving salary, per diem, or  
22 reimbursement for expenses from a government entity.

23 (14) That of a person owning less than 3 percent of the shares  
24 of a contracting party that is a for-profit corporation, provided that  
25 the ownership of the shares derived from the person's employment  
26 with that corporation.

27 (15) That of a party to litigation involving the body or board of  
28 which the officer is a member in connection with an agreement in  
29 which all of the following apply:

30 (A) The agreement is entered into as part of a settlement of  
31 litigation in which the body or board is represented by legal  
32 counsel.

33 (B) After a review of the merits of the agreement and other  
34 relevant facts and circumstances, a court of competent jurisdiction  
35 finds that the agreement serves the public interest.

36 (C) The interested member has recused himself or herself from  
37 all participation, direct or indirect, in the making of the agreement  
38 on behalf of the body or board.

39 (16) That of a person who is an officer or employee of an  
40 investor-owned utility that is regulated by the Public Utilities

Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:

(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.

(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.

(C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.

(D) The contract implements a program authorized by the Public Utilities Commission.

(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

(e) This section shall be repealed on January 1, 2018.

SEC. 2. Section 1091 is added to the Government Code, to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is

1 disclosed to the body or board of which the officer is a member  
2 and noted in its official records, and thereafter the body or board  
3 authorizes, approves, or ratifies the contract in good faith by a vote  
4 of its membership sufficient for the purpose without counting the  
5 vote or votes of the officer or member with the remote interest.

6 (b) As used in this article, “remote interest” means any of the  
7 following:

8 (1) That of an officer or employee of a nonprofit entity exempt  
9 from taxation pursuant to Section 501(c)(3) of the Internal Revenue  
10 Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of  
11 the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a  
12 nonprofit corporation, except as provided in paragraph (8) of  
13 subdivision (a) of Section 1091.5.

14 (2) That of an employee or agent of the contracting party, if the  
15 contracting party has 10 or more other employees and if the officer  
16 was an employee or agent of that contracting party for at least three  
17 years prior to the officer initially accepting his or her office and  
18 the officer owns less than 3 percent of the shares of stock of the  
19 contracting party; and the employee or agent is not an officer or  
20 director of the contracting party and did not directly participate in  
21 formulating the bid of the contracting party.

22 For purposes of this paragraph, time of employment with the  
23 contracting party by the officer shall be counted in computing the  
24 three-year period specified in this paragraph even though the  
25 contracting party has been converted from one form of business  
26 organization to a different form of business organization within  
27 three years of the initial taking of office by the officer. Time of  
28 employment in that case shall be counted only if, after the transfer  
29 or change in organization, the real or ultimate ownership of the  
30 contracting party is the same or substantially similar to that which  
31 existed before the transfer or change in organization. For purposes  
32 of this paragraph, stockholders, bondholders, partners, or other  
33 persons holding an interest in the contracting party are regarded  
34 as having the “real or ultimate ownership” of the contracting party.

35 (3) That of an employee or agent of the contracting party, if all  
36 of the following conditions are met:

37 (A) The agency of which the person is an officer is a local public  
38 agency located in a county with a population of less than 4,000,000.

39 (B) The contract is competitively bid and is not for personal  
40 services.

1 (C) The employee or agent is not in a primary management  
2 capacity with the contracting party, is not an officer or director of  
3 the contracting party, and holds no ownership interest in the  
4 contracting party.

5 (D) The contracting party has 10 or more other employees.

6 (E) The employee or agent did not directly participate in  
7 formulating the bid of the contracting party.

8 (F) The contracting party is the lowest responsible bidder.

9 (4) That of a parent in the earnings of his or her minor child for  
10 personal services.

11 (5) That of a public officer in the financial interest of that public  
12 officer's child, parent, sibling, or the spouse of the child, parent,  
13 or sibling, ~~in a contract made by that public officer~~, except a public  
14 officer's financial interests do not include any financial interest of  
15 those other persons unless the interest is actually known to the  
16 public officer, ~~and that public officer knowingly or willfully fails~~  
17 ~~to disclose those interests.~~ *officer.*

18 (6) That of a landlord or tenant of the contracting party.

19 (7) That of an attorney of the contracting party or that of an  
20 owner, officer, employee, or agent of a firm that renders, or has  
21 rendered, service to the contracting party in the capacity of  
22 stockbroker, insurance agent, insurance broker, real estate agent,  
23 or real estate broker, if these individuals have not received and  
24 will not receive remuneration, consideration, or a commission as  
25 a result of the contract and if these individuals have an ownership  
26 interest of 10 percent or more in the law practice or firm, stock  
27 brokerage firm, insurance firm, or real estate firm.

28 (8) That of a member of a nonprofit corporation formed under  
29 the Food and Agricultural Code or a nonprofit corporation formed  
30 under the Corporations Code for the sole purpose of engaging in  
31 the merchandising of agricultural products or the supplying of  
32 water.

33 (9) That of a supplier of goods or services when those goods or  
34 services have been supplied to the contracting party by the officer  
35 for at least five years prior to his or her election or appointment  
36 to office.

37 (10) That of a person subject to the provisions of Section 1090  
38 in any contract or agreement entered into pursuant to the provisions  
39 of the California Land Conservation Act of 1965.

1 (11) Except as provided in subdivision (b) of Section 1091.5,  
2 that of a director of, or a person having an ownership interest of,  
3 10 percent or more in a bank, bank holding company, or savings  
4 and loan association with which a party to the contract has a  
5 relationship of borrower or depositor, debtor or creditor.

6 (12) That of an engineer, geologist, architect, or planner  
7 employed by a consulting engineering, architectural, or planning  
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17 to the existing tenant, or, in a jurisdiction in which the rental  
18 vacancy rate is less than 5 percent, as to new tenants in a unit  
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20 person who became a public official on or after November 1, 1986.

21 (14) That of a person receiving salary, per diem, or  
22 reimbursement for expenses from a government entity.

23 (15) That of a person owning less than 3 percent of the shares  
24 of a contracting party that is a for-profit corporation, provided that  
25 the ownership of the shares derived from the person's employment  
26 with that corporation.

27 (16) That of a party to litigation involving the body or board of  
28 which the officer is a member in connection with an agreement in  
29 which all of the following apply:

30 (A) The agreement is entered into as part of a settlement of  
31 litigation in which the body or board is represented by legal  
32 counsel.

33 (B) After a review of the merits of the agreement and other  
34 relevant facts and circumstances, a court of competent jurisdiction  
35 finds that the agreement serves the public interest.

36 (C) The interested member has recused himself or herself from  
37 all participation, direct or indirect, in the making of the agreement  
38 on behalf of the body or board.

39 (17) That of a person who is an officer or employee of an  
40 investor-owned utility that is regulated by the Public Utilities



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4 investor-owned utility to provide energy efficiency rebates or other  
5 type of program to encourage energy efficiency that benefits the  
6 public when all of the following apply:

7 (A) The contract is funded by utility consumers pursuant to  
8 regulations of the Public Utilities Commission.

9 (B) The contract provides no individual benefit to the person  
10 that is not also provided to the public, and the investor-owned  
11 utility receives no direct financial profit from the contract.

12 (C) The person has recused himself or herself from all  
13 participation in making the contract on behalf of the state, county,  
14 district, judicial district, or city body or board of which he or she  
15 is a member.

16 (D) The contract implements a program authorized by the Public  
17 Utilities Commission.

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19 appointed member of an unelected board or commission of the  
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30 her interest in a contract pursuant to this section is punishable as  
31 provided in Section 1097. That violation does not void the contract  
32 unless the contracting party had knowledge of the fact of the remote  
33 interest of the officer at the time the contract was executed.

34 (e) This section shall become operative on January 1, 2018.

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